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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,934	11/18/2003	Kevin Colleran	IDL0002-US	3049

27510 7590 05/23/2007  
KILPATRICK STOCKTON LLP  
607 14TH STREET, N.W.  
WASHINGTON, DC 20005

EXAMINER
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PATEL, JAGDISH

ART UNIT	PAPER NUMBER
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3693

MAIL DATE	DELIVERY MODE
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05/23/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/714,934	<b>Applicant(s)</b> COLLERAN ET AL.	
	<b>Examiner</b> JAGDISH PATEL	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2007.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 is/are allowed.
- 6) ☒ Claim(s) 13-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/13/06</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. This communication is in response to amendment filed 3/6/07.

***Response to Amendment***

2. No claims have been amended.

***Response to Arguments***

3. Applicant's arguments with respect to claims 35 USC 103(a) over Burakoff have been found persuasive. However, applicant's arguments regarding 35 USC 101 rejection of claims 13-30 are maintained because the arguments are not persuasive. (see the explanation below under rejection of claims 13-30.)

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 13-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. See explanation below.

Art Unit: 3693

6. Claims 13-30 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility.

Alternatively

The claims are nonfunctional descriptive material, per se. There is no computer-readable medium recited and even if there was a medium, the information recited, i.e. "first record", "second record", "first graphical representation" is not functional descriptive material. In other words, this is not directed to an executable program or a data structure that would control a computer, it is just a collection of data stored on a computer readable medium. Such collection of data is not capable of imparting functionality when acted upon by a computer.

Based upon the foregoing analysis, the claims 13-30 recites non-statutory subject matter are accordingly rejected under 35 USC 101.

The applicant argues that there is recitation of the computer readable medium. However, the presence of such an element does not add to the fundamental defect of the claim due to the balance of the claim reciting data structure which is not capable imparting any functionality when executed by a processor (or similar device). In order for the claim to be statutory it must be directed to a functional descriptive material (e.g. computer instructions, program codes) which is stored on the computer readable medium which when in communication with a processor is capable of realizing the functionality of the functional descriptive material.

In other words, functional Descriptive material in combination with an appropriate computer readable medium must be capable of producing a useful, concrete and tangible result when used in a computer system. Cf. In re Warmerdam - data structure stored in a computer memory, and In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994) - data structure in a "computer readable medium".

The instant claim(s) recite a computer readable medium which stores "non-functional" data structure (such as first record ..storing destination data etc.). Destination data is not

Art Unit: 3693

functional data (as opposed to a code or instruction for storing such a data. Similarly, other limitations are interpreted as non-functional data structure.

Even when non-functional descriptive material is stored to be read or outputted by a computer without any functional interrelationship, they do not impart functionality to the computer, i.e., they are not (functional) computer components.

The examiner suggests the applicant to amend the claim to read the claim as follows:

A computer program product stored in a computer readable medium which executed by a computer performs the following method for identifying consent to an electronic delivery information:

(recite the method steps of claim 1.)

Similarly other (dependent) claims should also be amended consistent with amendment of claim 13..

#### *Allowable Subject Matter*

7. Claims 1-12 allowed over the prior art..

#### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3693

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748.

The examiner can normally be reached on **800AM-630PM Mon-Tue and Thu.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **KRAMER JAMES A** can be reached on **(571)272-6783**. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3693)

5/14/07